

APPEAL NO. 032439  
FILED OCTOBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 27, 2003. The hearing was continued to permit the appellant (claimant) to be reexamined by the designated doctor. The second session of the hearing was held on August 19, 2003, and the record closed on that date. With respect to the issues before him, the hearing officer determined that the claimant's compensable injury of \_\_\_\_\_, extends to include a cervical contusion with strain/sprain and a lumbar contusion with strain/sprain in addition to his fractured ribs and a hip injury, but that the compensable injury does not extend to the cervical and lumbar radiculopathy and discogenic disease; and that the claimant had disability, as a result of his compensable injury, from July 15 to September 29, 2002, but did not have disability for the period from September 30, 2002, to the date of the hearing. In his appeal, the claimant argues that the hearing officer's determinations that his compensable injury did not include cervical and lumbar radiculopathy and discogenic disease and that he did not have disability from September 30, 2002, through the date of the hearing are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in his extent-of-injury and disability determinations. The claimant had the burden of proof on both issues and they presented questions of fact for the hearing officer. There was conflicting evidence presented on the disputed issues. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained his burden of proving that his compensable injury included the cervical and lumbar radiculopathy and discogenic disease or that he had disability, as a result of his compensable injury, from September 30, 2002, through the date of the hearing. The hearing officer was acting within his province as the finder of fact in so finding. Nothing in our review of the record reveals that the challenged determinations are so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In his appeal, the claimant argues that he was not given proper assistance by the ombudsman at the hearing because he was assigned a different ombudsman at the second session of the hearing than had assisted him at the first session. The claimant did not raise any objection to the ombudsman's assistance and indeed, in response to

questioning from the hearing officer, the claimant stated that he wanted to proceed with the assistance of the second ombudsman. In addition, after reviewing the record, we find no evidence of the ombudsman having been anything but completely competent in her assistance of the claimant and we perceive no error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge